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Brian Mach, O.D.
President

Michael Lamb, O.D.
Vice President



Arizona State Board of Optometry

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**FINAL MINUTES FOR REGULAR MEETING
MARCH 20, 2015 SCHEDULED TO COMMENCE AT 9:00 A.M.**

Board Members

Brian Mach, O.D., President
Michael Lamb, O.D., Vice-President
Marla Husz, O.D.
John Chrisagis, O.D.
Mark Peller, O.D.
George A. Evanoff, Public Member
Blake Whiteman, Public Member

Staff:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

Legal Counsel:

Mona Baskin, Assistant Attorney General

A. CALL TO ORDER:

Dr. Mach

Dr. Mach called the meeting to order at 9:00 a.m.

B. ROLL CALL:

Ms. Hollins

Board Members Present: Brian Mach O.D., President
Michael Lamb O.D., Vice President
John Chrisagis, O.D.
Marla Husz, O.D.
Mark Peller, O.D.
Blake Whiteman, Public Member – arrived at 9:03 a.m.

Board Members Absent: George A. Evanoff, Public Member

Legal Counsel: Mona Baskin, Assistant Attorney General

Staff Present: Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Mach

University of Arizona basketball won yesterday; they play Ohio State tomorrow.

D. REVIEW, DISCUSSION AND VOTE ON INVESTIGATIVE REVIEWS/COMPLAINTS:

1. R.R. vs. Kenneth Williams, O.D. IR#201512

Allegation: Improper fit/correction of eyeglasses; optometrist failed/refused to correct problem

Dr. Lamb summarized the case as the patient came in for an exam for eyeglasses and was not happy with the eyeglass prescription given. The patient went to another optometrist for new prescription and was happy with that prescription. As the prescriptions from both doctors were similar, the patient claims he was not given a chance to have the original prescription checked again with Dr. Williams.

Dr. Williams stated in his response to the Board that he did check the original prescription and that the patient wanted a refund of the exam fee since they were not happy with that prescription. Dr. Lamb felt that although the patient was unhappy, the prescription was not incorrect and saw no violation of the optometric practice act.

MOTION: Dr. Lamb moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

2. J.C. vs. David Kaplan, O.D. IR#201513

Allegation: Improper fit/correction of eyeglasses; defective or poor quality eyeglasses;

Dr. Mach summarized the case patient was referred to Dr. Kaplan for a refraction to obtain a proper eyeglass prescription due to his glaucoma. Patient states he was seen by a student and that Dr. Kaplan did not see him to follow up and check the student's findings. Dr. Kaplan stated in his response to the Board that he did see the patient and discussed the findings from the student with the patient. Dr. Kaplan was present to address the board. The Board asked Dr. Kaplan if he follows up after the students see the patients, particularly in this case. Dr. Kaplan advised the Board that he saw the patient J.C.

MOTION: Dr. Peller moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

3. M.A. vs. V. Craig Stuart, O.D. IR#201514

Allegation: Optometrist failed/refused to correct problem

Dr. Husz summarized the case patient ordered glasses and took a year and a half to pay for them. When the patient came to pick up the glasses after they were paid off, he was told by staff that the prescription was no longer good and that they would not release the glasses, at which time the patient asked for a refund. The patient subsequently withdrew this complaint, however Dr. Stuart did not respond to the

Board's request for response pursuant to A.R.S. 32-1744(C). Once the complaint is filed, a doctor is still required to respond even if the complainant withdraws the complaint.

Ms. Whelan informed the Board that she spoke with Dr. Stuart on several occasions as he had not responded within 20 days, at which time Dr. Stuart told Ms. Whelan that the complainant withdrew the complaint so that was the end of it. Ms. Whelan advised Dr. Stuart that he still needed to respond to and include the records for this complaint. Dr. Stuart then sent over the patient's letter that was sent to him withdrawing the complaint. Ms. Whelan contacted Dr. Stuart and informed him that this was not sufficient as a written response and that Dr. Stuart still needed to respond, in his own words, to the allegations in the complaint as the Board still has an obligation to look at whether or not there is a violation regardless of whether the complainant withdraws the complaint. Dr. Lamb asked the Board if they wanted to send a letter of concern to Dr. Stuart for not responding to the Board within the 20-day timeframe required in A.R.S. §32-1744(C). Drs. Chrisagis and Peller were not agreeable to that as they felt that the several attempts made by Board staff to remedy the situation by asking Dr. Stuart to respond, implies that Dr. Stuart blatantly disregarded the statutes and rules for responding in writing based on the fact that the patient withdrew the complaint. Mr. Whiteman stated he would like to get the records and an official response from Dr. Stuart before this complaint gets dismissed.

The Board tabled this complaint to again request that Dr. Stewart respond to the original complaint and submit the records for this patient as required in the response.

4. K.H. vs. Joseph Taddonio, O.D. IR#201515

Allegation: Optometrist failed/refused to correct problem

Dr. Peller recused from this complaint discussion. Dr. Chrisagis summarized the case as patient went to see Dr. Taddonio for contacts and glasses. The patient received trial lenses for the contacts and felt that the eyeglass prescription was not right. The patient states Dr. Taddonio told her he did not have time to check the contact lenses on her when she came back in however, Dr. Taddonio refutes that. It appears that there was not great patient to doctor communication at that time and Dr. Taddonio stated he felt that he could have handled the situation better.

MOTION: Dr. Chrisagis moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Husz seconded the motion.

Dr. Lamb noted that the patient was a complicated contact lens fit and continued to return to the doctor's office to get different trial lenses as none of the lenses fitted seem to be working. On a few the visits back to Dr. Taddonio's office, the patient states she felt dismissed by the doctor and that the doctor did not take time to look at the contact lenses on the patient. At these times, the patient came in without an appointment and asked to be seen immediately by Dr. Taddonio who had three other patients waiting so he could not fit her in. The patient was upset about that however Dr. Taddonio simply could not see her at that time and asked to reschedule her.

VOTE: Motion passed 5-0. Dr. Peller recused.

5. M.R. vs. Kenneth O'Daniel, O.D. IR#201516

Allegation: Refusal to give a copy of prescription

Dr. Husz summarized the case as nine (9) months after the initial eye exam, the patient wanted a refill on Restasis drops. The doctor wanted to see the patient before refilling the prescription however, the patient felt that the prescription was good for one year. Dr. Peller noted that Dr. O'Daniel did finally refill the prescription without seeing the patient however, it would have been appropriate to see the patient as early as four months from the original exam date to check on the status of their ocular health prior to continuing Restasis drop. Dr. Husz stated she did not feel that the Restasis drop is a "one-year prescription" and that a doctor should be following up with their patients sooner than one year.

MOTION: Dr. Husz moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING REGULAR LICENSE APPLICATIONS:

- 6. Bui, Yen
- 7. Karimi, Azadeh

MOTION: Dr. Lamb moved to approve items 6 and 7 for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

F. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING ENDORSEMENT APPLICATIONS:

- 8. Carbone, Laura
- 9. Seacat, John

MOTION: Dr. Peller moved to approve items 8 and 9 for licensure. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

G. REVIEW, DISCUSSION, AND POSSIBLE VOTE ON APPROVAL OF CONTINUING EDUCATION TO SATISFY NON-DISCIPLINARY ORDER FOR CONTINUING EDUCATION:

- 10. Request for approval of additional continuing education to satisfy September 26, 2014 Non-disciplinary Order for Continuing Education for Robert Esposito, O.D., IR#201429

MOTION: Dr. Husz moved to accept the completed Continuing Education to satisfy the September 26, 2014 Non-disciplinary Order for CE for Robert Esposito, O.D., IR#201429. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

H. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON APPROVAL OF CONTINUING EDUCATION AS PROVIDED BY A.R.S. §32-1704(D) and A.A.C. R4-21-210:

Fiscal Year 2015

	Continuing Education	Date	No. of hours requested
a.	Hodges Eye Care & Surgical Center, "When to Refer for Cataract Surgery"	4/1/15	2 Regular
b.	Michael Berger CAOS, "Retinal Consultants of AZ"	3/17/15	3 Regular
c.	BDPEC, "Periocular Malignancies"	3/31/15	1 Regular
d.	BDPEC, "Update on Angle Closure & Angle Closure Glaucoma "	1/21/15 3/31/15	1 Regular
e.	Current Topics in Sports Medicine Concussions 2015	3/28/15	7.75 Regular
f.	BDPEC, "Nutrition & Eye Disease & Optical Coherence Tomography"	1/21/15	1 Regular
g.	BDPEC, "Wet MD & Ocular Manifestations of Plaques Toxicity"	2/18/15	1 Regular
h.	Associated Retina Consultants, LTD, "New & Emerging Treatments & Advances in Retina"	3/26/15	1 Regular
i.	Associated Retina Consultants, LTD, "Advances in Retina, re: Diabetic Retinopathy, AMD, unusual cases and at what level of retinal disease onset does a specialist need to be involved."	3/31/15	3 Regular
j.	HESLC Spring 2015	04/1/15	3 Regular

MOTION: Dr. Husz moved to accept items c, d, and f for approval. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0. Dr. Lamb recused.

MOTION: Dr. Lamb moved to accept item i for approval. Dr. Chrisagis seconded the motion.

Dr. Husz stated that she had an issue with the course outline as she didn't feel it was detailed enough to determine what the course content really was or what was going to be taught at the CE course.

VOTE: Motion passed 4-1. Dr. Mach voted no. Dr. Peller recused.

MOTION: Dr. Husz moved to accept item a. for approval. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to accept item b. or approval. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

Item e.: The request is for 7.75 hours however the board did not feel that some of the courses were directly related to the practice of the profession of optometry. Courses removed were "The Importance of Educating Student-athletes", "The Concussion Crisis: Soccer the next wave?" and "Audiologists' Role in mTBI".

MOTION: Dr. Peller moved to accept item e. for approval of 6 CE hours only. Dr. Lamb seconded the motion

VOTE: Motion passed 6-0.

MOTION: Dr. Husz moved to accept item g. for approval. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0. Dr. Lamb recused.

MOTION: Dr. Husz moved to deny item h. as CE provider needs to submit a more detailed course outline. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to accept item j. Dr. Peller seconded the motion.

VOTE: Motion failed 0-6.

SECOND MOTION: Dr. Lamb moved to deny item j. as the Board needs a more detailed course outline. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

I. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF BOARD MEETING MINUTES:

11. January 16, 2015 Regular Session Minutes

The Board tabled approval of January 16, 2015 minutes until next meeting.

J. EXECUTIVE DIRECTOR'S REPORT:

12. Budget
13. Rules moratorium exception request update from Governor's Executive Order
14. Future agenda items
15. Future Board meeting dates

Ms. Whelan reported that the beginning cash balance is \$170,806 with an ending cash balance of \$178,601. Currently, 66.67% of the budget year has elapsed with the Board's spending at 62.85%.

The Board was scheduled to hold an oral proceeding until the rules moratorium was enacted in January 2015 through the Executive Order 2015-01. The Board submitted a request for an exception to the moratorium at which time exceptions for a portion of the rules were granted. However, there was a misunderstanding between agency and the Governor's office as historically, the agency would submit a request for exception and the Governor's office would review the entire rules package as a whole. There were specific parameters in this Order which the agency followed; unfortunately, the Governor's office only reviewed the few rules that they had asked for justification on and that's what was sent back to the agency as approved. The agency needs entire rules package to be accepted so that it can move forward with the very crucial changes that are needed. The Board will be resubmitting the request for the entire

rules package with the justification required for the exception. There is currently a bill in session, (HB2297) that exempts certain agencies from the rules moratorium and the 90/10 agencies have requested that an amendment be put in to include the health regulatory boards as a law being passed that required an exception request every time the agency wants to promulgate rules would be very burdensome and detrimental to function of the small boards.

Future agenda items requested were a discussion on hiring a lobbyist for the Board. Future board meeting dates discussed were the April 17, 2015 Board meeting, however, a quorum was not available so the Board agreed to move the meeting to Friday, May 1, 2015 with the intention of holding the next regular meeting on June 19, 2015.

K. CALL TO PUBLIC:

Dr. Mach made a call to the public at 10:08 a.m. Robert Brown O.D. was present and addressed the Board stating he has practiced optometry for 17 years in Yuma. He stated that he has concerns regarding the rules changes and is waiting for the oral proceeding to be rescheduled. He also addressed that he, along with other optometrists, received an e-mail from Dr. Mach regarding getting involved in the profession. Dr. Brown stated that to his detriment, he has not attended a board meeting in the 17 years he has been practicing here in Arizona but that he is upset that he felt admonished by the Board president for asking questions regarding the rules process and the rules themselves. After several e-mails back and forth between Ms. Whelan and Dr. Mach and Dr. Brown, Ms. Whelan asked Dr. Brown to meet regarding the rules in order to answer any questions he may have. The meeting was later canceled due to the moratorium enacted by the new governor in January 2015. Dr. Brown stated he was unhappy that he was told he could not e-mail all of the Board members as it violated the open meeting law. He stated he wanted to know where the law was that stated that as he feels he should be able to e-mail the Board members as he sees fit. Dr. Brown inquired as to the finances of the Board and where the fund sweeps went and how the potential increase to license renewal fees is needed when the State can come at any time and take the monies.

L. MOTION TO ADJOURN:

Dr. Peller moved to adjourn the meeting at 10:13 a.m. Dr. Chrisagis seconded the motion.

The meeting was adjourned at 10:13 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date